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January 20, 1999

BY HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Salas:

Yesterday, on behalf of Qwest Communications Corporation ("Qwest"), the undersigned and Jennifer Purvis of Hogan and Hartson L.L.P. and Jane Kunka, Manager, Public Policy, Qwest, met with Christopher Wright, General Counsel, and Jeffrey Lanning and Paula Silberthau of the General Counsel's Office, to discuss the legal issues in the referenced proceeding.

In the meeting Qwest emphasized the importance of preserving competitors' ability to access all local network capabilities, including all advanced capabilities, if consumers are to have a real choice of broadband service providers. Qwest underscored the prohibitive cost of collocating xDSL equipment in every central office, and obtaining local transport from every central office, which would be necessary under the Commission's separate affiliate proposal (even assuming that the incumbent local exchange carriers ("ILECs") implement improvements in collocation and operations support systems). 1/

Qwest also noted the legal impediments to the NPRM separate affiliate proposal. The discussion focused on the definition of "incumbent local exchange carrier" in Section 251(h) of the Act, 47 U.S.C. § 251(h). Qwest reiterated the legal arguments made in its initial comments (filed September 25, 1998), at pages 22-39. Qwest also emphasized that if the Commission does adopt its separate affiliate approach, it is essential that the Commission set forth additional requirements for the separate affiliate in order to establish its independence from the ILEC within the meaning of Section 251(h). These additional requirements should include substantial independent public ownership in the affiliate, a prohibition on joint marketing by the ILEC and its affiliate, and a prohibition on resale by the affiliate of the ILEC's services.

In the meeting, Qwest also discussed the importance of broadly defining the network elements that competitors may employ under Section 251(c)(3) of the Act. As discussed in detail in Qwest's comments, it is essential that the Commission clarify that the loop network element includes the electronics that make the loop a transmission facility. 2/ Thus, for example, competitors must have access to xDSL-equipped loops, DS-1, DS-3, and OC-N loops as network elements. 3/ In addition, Qwest emphasized the need for network element access to interoffice packet transport and switching. 4/

1/ See Qwest Initial Comments in response to NPRM in CC Docket No. 98-147 (September 25, 1998) at 8-18 (Qwest Initial Comments).

2/ See Qwest Initial Comments at 63-65; Reply Comments (October 16, 1998) at 39-40.

3/ Id. at 64-65.

4/ Id. at 64; Reply Comments at 38-39.

The points made in the attached handout also were discussed.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for Qwest Communications
Corporation

Enclosures

cc: Christopher Wright
Jeffrey Lanning
Paula Silberthau

QWEST COMMUNICATIONS CORPORATION
JANUARY, 1999

CC DOCKET NO. 98-147

I. Introduction

- Customers want to use Qwest's state-of-the-art broadband interexchange network but are stymied by lack of broadband in the last mile.

- The 1996 Act prohibits ILECs from denying competitors access to their advanced local networks. Broadband local competition depends on that access.

II. The FCC Structural Separation Proposal Draws Lines in the Wrong Place by Unlawfully Allowing ILECs to Shelter Advanced Local Network Capabilities in a "New LEC" Subsidiary.

- The Telecom Act recognizes that competition depends upon the ability of CLECs to use the ILEC's network, and forbids the ILEC from escaping this obligation by migrating its network investment to another affiliate.

- The FCC plan would create an "Old LEC" that owns old local plant, and a "New LEC" that would own new (broadband) local investment, free from the Section 251(c) obligation to allow competitors to employ that network capability to provide competing local service. This plan is unlawful.

- The FCC plan assumes that allowing New LEC to escape its Section 251 obligations is appropriate because competitors do not need to use ILEC advanced network elements in order to provide broadband local connectivity to their customers.

- This finding is factually incorrect. Competitors depend on access to *all* ILEC advanced network capabilities to provide advanced services -- not just "conditioned" loops. Those capabilities are an integral part of the ILEC network, and access to them is essential.

- If the Commission allows ILECs to shelter advanced network capabilities from competitors, broad-based competition for advanced services will not develop. Competitors will be relegated to using old circuit-switched functionality only.

III. Even Assuming that New LEC Cannot Invest in Local Exchange Facilities, the Separate Affiliate Plan Still Does Not Contain Adequate Safeguards Against Discrimination.

- The FCC plan does not address the ILEC's incentives and ability to unfairly favor New LEC and discriminate against competitors of the affiliated New LEC and Old LEC combination.

- At a minimum, if the Commission pursues the separate affiliate proposal, it must strengthen it by: (1) requiring partial ownership of the New LEC sub to create separate fiduciary duties; (2) restricting joint marketing by Old LEC and New LEC; (3) prohibiting resale by New LEC of Old LEC retail services; (4) prohibiting sharing of brand names, buildings, administrative services, etc.; (6) giving competitors "pick and choose" rights to Old LEC/New LEC interconnection agreements; and (7) requiring pre-approval of a compliance plan.

IV. National Rules Are Needed to Clarify CLEC Rights to Obtain and Use ILEC Advanced Network Capabilities.

- New rules are needed whether or not the ILEC creates a separate subsidiary.

- At a minimum, the FCC must: (1) clarify that "loops" include the associated electronics; (2) order ILECs to provide access to local dark fiber as a network element; (3) ensure that CLECs can buy as a network element the *functionality connecting a customer with the requesting carrier's local packet network* (CompTel's "shared data channel"); (4) require resale at wholesale rates of advanced "exchange access" services; and (5) revise collocation and loop rules to make collocation of CLEC equipment in ILEC central offices easier and cheaper.

- The Commission also should consider imposing build-out mandates on the ILECs to meet customer and competitor demand for high-speed last mile connections.